

JOSHUA HILL JR. (SBN 250842)
jhill@mofo.com
CHRISTINE Y. WONG (SBN 284026)
christinewong@mofo.com
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Tel: (415) 268-7000
Fax: (415) 268-7522

*Proposed Special Regulatory Counsel to Debtors
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re

PG&E CORPORATION,

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**APPLICATION OF DEBTORS
PURSUANT TO 11 U.S.C. § 327(E) AND
FED. R. BANKR. P. 2014(A) AND 2016
FOR AUTHORITY TO RETAIN AND
EMPLOY MORRISON & FOERSTER
LLP AS SPECIAL REGULATORY
COUNSEL FOR THE DEBTORS
EFFECTIVE AS OF THE PETITION
DATE**

Date: June 12, 2019

Time: 9:30 a.m. (Pacific Time)

Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

Objection Deadline: June 5, 2019
4:00 p.m. (Pacific Time)

1 PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the
2 “**Utility**”), as debtors and debtors in possession (collectively, “**PG&E**” or the “**Debtors**”) in the
3 above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Application (the
4 “**Application**”), pursuant to section 327(e) of title 11 of the United States Code (the
5 “**Bankruptcy Code**”) and Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure
6 (the “**Bankruptcy Rules**”), for authority to retain and employ Morrison & Foerster LLP
7 (“**Morrison & Foerster**” or the “**Firm**”) as special regulatory counsel to the Debtors effective as
8 of the Petition Date (as defined below).

9 The Debtors request the Court approve the retention of Morrison & Foerster as special
10 regulatory counsel to the Debtors, and to provide the Debtors with legal advice in relation to
11 certain ongoing government investigations in accordance with Morrison & Foerster’s normal
12 hourly rates in effect when services are rendered and Morrison & Foerster’s normal
13 reimbursement policies.

14 In support of this Application, the Debtors submit the Declaration of Joshua Hill Jr., a
15 member of the Firm (the “**Hill Declaration**”), and the Declaration of Janet Loduca, Senior Vice
16 President and Interim General Counsel of PG&E Corp. (the “**Loduca Declaration**”), each of
17 which is filed concurrently herewith. A proposed form of order approving the retention and
18 employment of Morrison & Foerster is annexed hereto as **Exhibit A** (the “**Proposed Order**”).
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. JURISDICTION**

3 The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334,
4 the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24
5 (N.D. Cal.), and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District
6 Court for the Northern District of California (the “**Bankruptcy Local Rules**”). This is a core
7 proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28
8 U.S.C. §§ 1408 and 1409.

9 **II. BACKGROUND**

10 On January 29, 2019 (the “**Petition Date**”), the Debtors commenced with the Court
11 voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their
12 businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and
13 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in either of the Chapter
14 11 Cases. The Debtors’ Chapter 11 Cases are being jointly administered for procedural purposes
15 only pursuant to Bankruptcy Rule 1015(b).

16 On February 12, 2019, the United States Trustee (the “**U.S. Trustee**”) appointed an
17 Official Committee of Unsecured Creditors (the “**Creditors Committee**”). On February 15,
18 2019, the U.S. Trustee appointed an Official Committee of Tort Claimants (the “**Tort Claimants**
19 **Committee**” and, together with the Creditors Committee, the “**Committees**”).

20 Additional information regarding the circumstances leading to the commencement of the
21 Chapter 11 Cases and information regarding the Debtors’ businesses and capital structure is set
22 forth in the *Amended Declaration of Jason P. Wells in Support of the First Day Motions and*
23 *Related Relief* [Docket No. 263] (the “**Wells Declaration**”).

24 **III. MORRISON & FOERSTER’S QUALIFICATIONS**

25 Prior to the Petition Date, in response to a competitive RFP process involving numerous
26 law firms, Morrison & Foerster was selected as a preferred provider of legal services specifically
27 in connection with CPUC regulatory enforcement proceedings. Since early 2018, Morrison &
28 Foerster has served as regulatory defense counsel to the Debtors, and have provided the Debtors

1 with legal advice concerning certain ongoing investigations by the Safety and Enforcement
2 Division of the CPUC and related matters described below (collectively, the “**Special Counsel**
3 **Matters**”). As a result of its prepetition representation of the Debtors, and, in particular, Joshua
4 Hill’s prior representation of the Debtors, Morrison & Foerster has acquired familiarity with the
5 Debtors’ operations generally, as well as in-depth knowledge of the facts and circumstances
6 specific to the ongoing investigations against the Debtors. The Debtors submit that a favorable
7 resolution of the Special Counsel Matters is critical to the Debtors’ continued ability to operate in
8 a highly-regulated environment, and ultimately the success of these Chapter 11 Cases.

9 The Debtors also have selected Morrison & Foerster as their attorneys because of the
10 Firm’s extensive general experience in and knowledge of the energy industry, as well as Morrison
11 & Foerster’s recognized expertise in the field of regulatory defense, criminal investigations, and
12 litigation involving state and federal government entities. The professionals who will be
13 primarily responsible for this engagement have advised clients with respect to regulatory
14 compliance, managing investigations and related litigation, and risk assessment. Prior to joining
15 the Firm, Joshua Hill represented the Debtors in connection with an Order Instituting
16 Investigation (“**OII**”) commenced by the CPUC related to Debtors’ gas distribution
17 recordkeeping and safety practices through a hearing before a CPUC Administrative Law Judge
18 (Case No. I.14-11-008). Mr. Hill’s representation included all aspects of the OII proceeding,
19 including prehearing briefing, oral examinations, preparation of testimony, hearing, and post-
20 hearing briefing, and appeal. Thus, Morrison & Foerster is uniquely qualified to represent the
21 Debtors in enforcement proceedings before the CPUC.

22 More generally, Morrison & Foerster maintains a robust presence in the San Francisco
23 Bay Area region with more than 300 attorneys. Morrison & Foerster has extensive experience
24 advising and representing other utilities in practice areas ranging from corporate law, mergers and
25 acquisitions, capital markets, FERC, privacy, tax, restructuring, and commercial litigation.
26 Morrison & Foerster’s clients in the energy industry include, among others, Southwest Gas,
27 WGL, Public Service Enterprise Group, Dominion Energy, Inc., SoCal Edison, ConEdison, San
28 Diego Gas & Electric, and Duke Energy Corporation.

1 In light of the foregoing, the Debtors submit that the interruption and duplicative cost
2 involved in obtaining substitute counsel to replace Morrison & Foerster would be disruptive and
3 harmful to the Debtors and, as a result the Chapter 11 Cases. Substitute counsel would require
4 substantial time (and the incurrence of potentially significant estate expense) in order to
5 familiarize itself with the Debtors, their operations, and the facts pertinent to the Special Counsel
6 Matters.

7 **IV. SCOPE OF SERVICES**

8 The services to be performed by Morrison & Foerster are appropriate and necessary to
9 enable the Debtors to defend against ongoing investigation and enforcement actions brought by
10 CPUC. Subject to further order of this Court, it is proposed that Morrison & Foerster be
11 employed to render the following professional services:

- 12 a. advising and representing the Debtors generally in connection with
13 ongoing investigations conducted by the Safety and Enforcement
14 Division of the CPUC (“**SED**”), including by performing legal and
15 factual due diligence, analyzing documents, conducting interviews,
16 and formulating responses to inquiries received from CPUC
(including the following data requests issued by the SED: Camp Fire
SED-001 through SED-006; North Bay Fire SED-006 and SED-007;
and other miscellaneous data requests);
- 17 b. formulating strategy in advance of and preparing on behalf of the
18 Debtors necessary motions, applications, objections, and other
19 filings in any Orders Instituting Investigation commenced by the
20 SED relating to alleged violations of state laws and regulations in
21 connection with the 2017 and 2018 wildfires;
- 22 c. advising and representing the Debtors generally in connection with
23 any Notices of Violation or Electric Safety Citations, pursuant to
24 CPUC Resolution ALJ-274, commenced by the SED relating to
25 alleged violations of state laws and regulations in connection with
26 the 2017 and 2018 wildfires;
- 27 d. negotiating with the SED and other regulatory bodies, as
28 appropriate;
- e. advising and representing the Utility regarding its rights and
obligations under its Transportation Services Agreements with Ruby
Pipeline, L.L.C.; and
- f. performing all other necessary legal services in connection with the
foregoing; *provided, however*, that to the extent Morrison & Foerster
determines that such services fall outside of the scope of services
historically or generally performed by Morrison & Foerster as
special regulatory counsel, Morrison & Foerster will file a

supplemental declaration.

It is necessary for the Debtors to employ attorneys to render the foregoing professional services. Morrison & Foerster has stated its desire and willingness to act in these cases and render the necessary professional services as attorneys for the Debtors. While the Debtors believe Morrison & Foerster would otherwise qualify as an ordinary course professional under the *Order Pursuant to 11 U.S.C. §§ 105(a), 327, 328, and 330 Authorizing the Debtors to Employ Professionals Used in the Ordinary Course of Business Nunc Pro Tunc to the Petition Date* [Dkt No. 707] (the “**OCP Order**”), Morrison Foerster expects to incur fees and expenses in excess of the caps provided in the OCP Order. Therefore, the Debtors seek to retain Morrison & Foerster.

V. NO DUPLICATION OF SERVICES

In addition to this Application, the Debtors have filed, or expect to file shortly, applications to employ: (i) Weil Gotshal & Manges LLP, as lead bankruptcy counsel, (ii) Keller & Benvenuti LLP, as co-bankruptcy counsel, (iii) Cravath, Swaine & Moore LLP, as corporate counsel, (iv) Munger, Tolles & Olson LLP (“**Munger, Tolles**”), as regulatory counsel, (v) Lazard Frères & Co. LLC, as investment banker, (vi) AP Services, LLP, to provide a chief restructuring officer, deputy chief restructuring officer, and other personnel, and (vii) Prime Clerk, LLC, as claims and noticing agent. The Debtors may also file applications to employ additional professionals. Rather than resulting in any extra expense to the Debtors’ estates, it is anticipated that the efficient coordination of efforts of the Debtors’ attorneys and other professionals will greatly add to the progress and effective administration of these Chapter 11 Cases.

As described in the Hill Declaration, Morrison & Foerster will only advise the Debtors with respect to the Special Counsel Matters. Although Munger, Tolles was also retained to provide regulatory advice to the Debtors, the matters for which Munger, Tolles and Morrison & Foerster have been retained are separate, discrete regulatory matters as identified in each firm’s respective retention application. Accordingly, the matters for which Munger, Tolles has been retained will not overlap with the Special Counsel Matters.

Further, Morrison & Foerster intends to monitor and, to the extent necessary, coordinate with the other professionals in these Chapter 11 Cases to ensure a clear delineation of each firm’s

1 respective roles in connection with representation of the Debtors in these Chapter 11 Cases to
2 prevent duplication of services and ensure the cases are administered in the most efficient fashion
3 possible.

4 **VI. MORRISON & FOERSTER'S DISINTERESTEDNESS**

5 To the best of the Debtors' knowledge, the partners of, counsel to, and associates of
6 Morrison & Foerster do not have any connection with or any interest adverse to the Debtors, their
7 creditors, or any other party in interest with respect to the Special Counsel Matters. In addition,
8 to the best of the Debtors' knowledge, and based on the Hill Declaration, Morrison & Foerster
9 does not have any connection with any creditor or other party in interest, except as may be set
10 forth in the Hill Declaration.

11 Based upon the information set forth in the Hill Declaration, Morrison & Foerster is
12 therefore qualified to serve as special regulatory counsel to the Debtors. *See In re AroChem*
13 *Corp.*, 176 F.3d 610, 622 (2d. Cir. 1999) ("[W]here the trustee seeks to appoint counsel only as
14 'special counsel' for a specific matter, there need only be no conflict between the trustee and
15 counsel's creditor client with respect to the specific matter itself.") (quoting *Stombous v.*
16 *Kilimnik*, 988 F.2d 949, 964 (9th Cir. 1993)) (internal quotations omitted).

17 The Debtors have been informed that Morrison & Foerster will conduct an ongoing
18 review of its files to ensure that no disqualifying circumstances arise. If any new relevant facts or
19 relationships are discovered, Morrison & Foerster will supplement its disclosure to the Court.

20 **VII. PROFESSIONAL COMPENSATION**

21 As set forth in the Hill Declaration, for the 90 days prior to the Petition Date, Morrison &
22 Foerster received payments and advances in the aggregate amount of \$280,521.63 for
23 professional services performed and to be performed, and expenses incurred and to be incurred in
24 connection with the Special Counsel Matters. Morrison & Foerster did not receive an advance
25 payment retainer from the Debtors, and all amounts collected were in connection with invoices
26 submitted to the Debtors by Morrison & Foerster.

27 The Debtors understand and have agreed that Morrison & Foerster hereafter will apply to
28 the Court for allowances of compensation and reimbursement of expenses in accordance with the

1 applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local
2 Rules, the *United States Bankruptcy Court Northern District of California Guidelines for*
3 *Compensation and Expense Reimbursement of Professionals and Trustees*, effective February 19,
4 2014 (the “**Local Guidelines**”), the *U.S. Trustee Guidelines for Reviewing Applications for*
5 *Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in*
6 *Larger Chapter 11 Cases*, effective November 1, 2013 (the “**U.S. Trustee Guidelines**,” and
7 together with the Local Guidelines, the “**Fee Guidelines**”), and any further Orders of the Court
8 (the “**Orders**”) for all professional services performed and expenses incurred after the Petition
9 Date.

10 Subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy
11 Local Rules, the Fee Guidelines, and the Orders, the Debtors propose to compensate Morrison &
12 Foerster for services rendered at the hourly rates in effect from time to time, as set forth in the
13 Hill Declaration, and to reimburse Morrison & Foerster according to its customary reimbursement
14 policies. The Debtors respectfully submit that Morrison & Foerster’s rates and policies stated in
15 the Hill Declaration are reasonable, particularly given the nature of the Special Counsel Matters
16 and their potential impact on these Chapter 11 Cases.

17 **VIII. NOTICE**

18 Notice of this Application will be provided to (i) the Office of the United States Trustee
19 for Region 17 (Attn: James L. Snyder, Esq. and Timothy Laffredi, Esq.); (ii) counsel to the
20 Creditors Committee; (iii) counsel to Tort Claimants Committee; (iv) the Securities and Exchange
21 Commission; (v) the Internal Revenue Service; (vi) the Office of the California Attorney General;
22 (vii) the California Public Utilities Commission; (viii) the Nuclear Regulatory Commission; (ix)
23 the Federal Energy Regulatory Commission; (x) the Office of the United States Attorney for the
24 Northern District of California; (xi) counsel for the agent under the Debtors’ debtor in possession
25 financing facility; and (xii) those persons who have formally appeared in these Chapter 11 Cases
26 and requested service pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that no
27 further notice is required.

28 No previous request for the relief sought herein has been made by the Debtors to this or

any other Court.

WHEREFORE the Debtors respectfully request entry of an order (i) granting the relief requested herein as a sound exercise of the Debtors' business judgment and in the best interests of the Debtors, their estates, creditors, shareholders, and all parties in interest, and (ii) such other and further relief as the Court may deem just and appropriate.

Dated: May 22, 2019

Respectfully submitted,

By 

Name: Janet Loduca

Title: Senior Vice President and Interim General Counsel